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August 9, 2004

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TWB-204
Washington, DC 20554

Re: Ex parte, *Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, CC Docket Nos. 00-175, 01-337, 02-33

Dear Ms. Dortch:

On Friday, August 6, 2004, Aryeh Friedman and the undersigned, representing AT&T, met with William Dever, Michael Carowitz, William Kehoe, William Cox, Kimberly Jackson and Ben Childers of the Wireline Competition Bureau concerning the above-captioned proceeding. The attached outline summarizes our discussion about the state of competition in the large business services market and AT&T's concerns about the ILECs' continuing control of special access services.

Consistent with Section 1.1206 of the Commission's rules, I am filing one electronic copy of this notice and request that you place it in the record of the above-captioned proceeding.

Respectfully submitted,

F S Simone

cc: M. Carowitz
B. Childers
W. Cox
W. Dever
K. Jackson
W. Kehoe

Non-Dom NPRM: Enterprise Customers

I. BOC Dominant Control Over "Special Access" Bottleneck Maintained Through Anticompetitive Conduct:

A. BOC Dominant Control

1. AT&T has already demonstrated BOC control of the bottleneck special access facilities in its June 30, 2003 Comments at 19-24; *see also*, AT&T's July 28, 2003 Reply Comments at 8-9 and 15-18.

2. This continues to be the case today:

(a) UBS Investment Research, "How Access Charges Determine Winners and Losers in Telecom Services" 2 April 2004 at 22: "AT&T and MCI still purchase special access services to reach more than 70-80% of their enterprise customers ... In many instances the special access circuits required to connect the end user to the IXC network represents the majority of the total cost of the circuit. That is, more than 50% of the total cost of a frame relay drop or private line is represented by the cost of the last mile that the IXCs must pay to the ILECs."

(b) Frost & Sullivan, U.S. Private Line Market, June 2004 at 15 (Regional Bell Companies dominate the special access market, especially for lower speed connectivity ... expect the regional Bell carriers and ILECs to continue to dominate at the DS-1 level and below"). *See also, id.* at 61 ("Special Access Market: 2003 Market Share Chart" showing Verizon with 34.6% national market share, SBC with 34% market share, BellSouth with 14.4% and Qwest with 12.5%, with the BOCs together controlling 95.5%) and 62 ("Special Access Market Share (2007)" showing BOC share increasing to 95.8% share; "Expect SBC to become market leader, just ahead of Verizon" "With emphasis on enterprise strategy, expect access line sales (and subsequently, smaller special access market share) from Verizon").

(c) BOC Reports: Verizon, in June, 2004, stated that it is the "Market share leader" with "Sequential growth" for DS1, DS3 and SONET.[1] *See also*, BellSouth Financial and Operational Results 2Q04, July 26, 2004[2] at 14 (discussing growth in DS1 units, and improving volumes for DS3 and Ring); Investor Update, SBC 2004 Q2 Earnings Conference Call, July 22, 2004[3] at 16 (describing Hi-cap transport revenue sequential growth).

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[1] Verizon, Lawrence T. Babbio presentation, CIBC World Markets Communication & Technology Food Chain Conference, June 7, 2004 at 12. http://investor.verizon.com/news/20040607/20040607.pdf.

[2] http://www.bellsouth.com/investor/pdf/2q04p_slides.pdf.

[3] http://www.sbc.com/Investor/Financial/Earning_Info/docs/2Q_04_slide_c.pdf.

B. Dominance Maintained Through Anticompetitive Lock-Ups

1. *AT&T v. BellSouth*, File No. EB-04-MD-010: BellSouth's Transport Savings Plan ("TSP") and Premium Service Incentive Plan ("PSIP") tariffs require that IXC customer commit to maintain, with BellSouth, purchases at levels equivalent to at least *90-95 percent* of the customer's past purchases from BellSouth in order to obtain or to continue to obtain *any* volume/term discounts on the rates for BellSouth's special access services. The initial commitment periods are three or five years and, for the TSP, the "lock up" of demand can continue indefinitely through automatic one-year extensions.[4] BellSouth effectively requires customers to continue to make purchases from BellSouth in competitive areas if they wish to obtain discounts where BellSouth is the sole provider of special access services and to continue to purchase from BellSouth high-capacity facilities (*e.g.*, DS3s) in order to receive discounts on lower capacity facilities subject to a lower level of, or no, competition.[5] As a result, BellSouth is able to starve its special access competitors of demand for their services and prevent its wholesale customers from diverting traffic to special access facilities that they might otherwise build. At the same time, by maintaining its special access monopoly, BellSouth is able to control the cost of a key input used by competitors of its own long distance affiliates.

2. Not limited to BellSouth. *See also*, Wall Street Journal, May 6, 2004, Page A4, "*SBC Dispute Undermines Move Toward Local Phone Competition*" (SBC proposal to Talk America Inc. would require Talk America to send 90% or more of its phone traffic to SBC's network instead of using its own equipment and not enter similar agreements with rival phone networks); *Illinois Bell Tel. Co. & Sage Telecom, Inc.*, ALJ Proposed Order, No. 04-0380 (Ill. Comm. Comm'n July 1, 2004) (Sage Telecom, Inc. and SBC Illinois entered a Negotiated Local Wholesale Complete Agreement which imposed penalties if Sage failed to purchase at least 450,000 lines per month and use the Agreement to meet 95% of its local needs in order to enjoy discounts).

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[4] BellSouth recently "grandfathered" the plans, thereby limiting them to existing customers. But this does not obviate the anticompetitive nature of the tariffs, because only by such renewals can the current plan customers obtain any volume-based discounts.

[5] A TSP/PSIP customer's migration to DS3 and above services from BellSouth actually *strengthens* the lock up effect of those plans. Because migration results in lower current payments to BellSouth, but the customer remains committed to spend at least 90 percent of the "base spend" from the prior period, the customer actually has less ability and incentive to seek alternative vendors if the combination of migration among BellSouth's offerings and reliance on alternative vendors would bring the customer's current spend below 90 percent of the commitment. Alternatively, the customer is disincented from moving even to lower priced, more efficient Bellsouth high capacity offerings, further demonstrating the lack of any legitimacy for the 90 percent commitment requirement.

II. The BOCs Have Been Leveraging Their Dominance In Special Access Into The Large Business Market[6] Through Anticompetitive Price Squeezes.

A. The BOCs Have Been Rapidly Gaining Share In This Market Segment

1. The BOCs have gained a large share of those national enterprise customers with a strong presence in their territory and are rapidly gaining share for other national enterprise accounts. BOCs already have national MPLS (multi-protocol label switching) enabled broadband IP network backbones.

(a) Verizon: Verizon has deployed a national MPLS enabled broadband IP network backbone, and offers frame relay, ATM, optical networking and IP-VPN services to Enterprise customers.[7] Verizon reported that its first quarter of 2004 "included nearly 500 Enterprise Advance sales to customers. Enterprise Advance is Verizon's initiative to connect *and extend its local networks and services to the national large-business market.*"[8]

Verizon reported in the second quarter of 2004 that in the Enterprise segment:

- "Over 2,000 opportunities closed to date
- Over 100 Fortune 500 customers
- Over 900 total unique customers
- Targeting $250 million in new revenue for 2004"[9]

See also, Declaration of Eric J. Bruno, Vice President, Product and Portfolio Management, Enterprise Solution Group,[10] ¶ 21 (Verizon won *over a third* (68/203) Enterprise segment RFPs since the beginning of 2003 to which Verizon responded and where contracts were awarded).

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[6] *SBC/Ameritech Merger Order*, 14 FCC Rcd. 14712 (1999) ¶ 89; *Bell Atlantic/GTE Merger Order,* 15 FCC Rcd. 14032 (2000) ¶ 120.

[7] Verizon, Lawrence T. Babbio presentation, CIBC World Markets Communication & Technology Food Chain Conference, June 7, 2004, http://investor.verizon.com/news/20040607/20040607.pdf at 13; Tom Bartlett presentation, J.P. Morgan, 32nd Annual technology & Telecom Conference, May 4, 2004, http://investor.verizon.com/news/20040504/20040504.pdf at 14.

[8] Verizon's Investor Quarterly, Q1 (April 27, 2004) at 4 (emphasis added).

[9] Verizon, 2nd Quarter 2004 Earnings Conference Call, Doreen Toben, Chief Financial Officer, July 27, 2004 http://investor.verizon.com/news/20040727/20040727.pdf at 20.

[10] Submitted with the Letter from Michael E. Glover, Verizon Senior Vice President & Deputy General Counsel, to Marlene Dortch, FCC (July 2, 2004) CC Docket No. 98-147, as Attachment 3 to White Paper entitled "Competitive Providers Are Successfully Providing High Capacity Services to Customers Without Using Unbundled Elements."

(b) SBC reported in the first quarter, 2004 that in the large-business market, it "has expanded its product portfolio, strengthened its global accounts organization and enhanced its out-of-region networks. These networks include a national Layer 3 IP backbone with MPLS (multi-protocol label switching) ... based on current trends, SBC expects approximately $200 million in incremental revenues from its large business initiative in 2004."[11] Notable first quarter wins included a contract with Huntington Bancshares for, *inter alia*, Frame Relay and ATM services, and "complex communications solutions for companies such as Foot Locker."[12] SBC also introduced "a new hosted VPN (Virtual Private Network) service for business wide-area networks [w]ith traffic carried over the private SBC IP (Internet Protocol) backbone network."[13] SBC reported in the second quarter 2004 that in the large business market segment SBC "respond[ed] to 57 percent more bid requests in the second quarter of 2004 than in the year-earlier second quarter ... contracts won in this space have increased 34 percent from the fourth quarter of 2003 [and t]he dollar value of contracts won has increased as well, up more than 30 percent versus the second quarter of 2003."[14] Among the recent wins:

- "A three year contract with CB Richard Ellis, a commercial real estate firm, to provide data network and managed services to more than 100 offices nationwide."
- "A multitiered contract to provide voice and data services, including Network-Based VPN (NPVN) for 182 regional offices and retail locations of glass maker Vitro America."
- "A contract with wholesale mortgage banker American Mortgage Network (AmNet) "to provide SBC PremierSERV IP-VPN Service to connect AmNet headquarters with 19 branches," and
- "A three year contract with Maritz Inc ... serving locations in 16 states including New York, Massachusetts, Arizona, Florida and Virginia."[15]

3. Yankee Group, "Communications Survey Confirms IXCs Lost Enterprise Market Share in 2003" (March 19, 2004). Survey of 200 enterprise CIOs and network managers (enterprise defined as having 1,000 employees or more). "Combined, AT&T, MCI and Sprint lost 33 contracts and gained only 17 – a net lost of 16 contracts. On the other side of the ledger, the RBOCs achieved a net gain of 10, with SBC and Qwest leading the group of net gains." *Id.* at 1. The critical issue was price (*see* Exhibit 2).

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[11] Investor briefing, http://www.sbc.com/Investor/Financial/Earning_Info/docs/1Q_04_IB_FINAL.pdf.

[12] *Id.* at 6.

[13] *Id.* at 9.

[14] Investor briefing, http://www.sbc.com/gen/investor-relations?pid=2985 July 22, 2004.

[15] *See also*, Banc of America Securities, BellSouth Corporation: Stable 1Q on Financials and Operating Metrics," April 23, 2004 at 1 (BellSouth had a $750 million book of business" in the interLATA enterprise segment, "up from $690 at the end of the last quarter and $600 million at the end of 3Q03").

B. The BOCs Are Winning Large Business Market Accounts Through Price Squeezes

1. The "price" issue is in fact price squeezes as demonstrated in AT&T's June 30, 2003 Comments in this proceeding at 30-32. Other discriminatory conduct is described in those Comments at pp. 33-39. *See also*, AT&T's July 28, 2003 Reply Comments at 18-22.

2. BOC special access price squeezes continue. ***Example -- compare:***

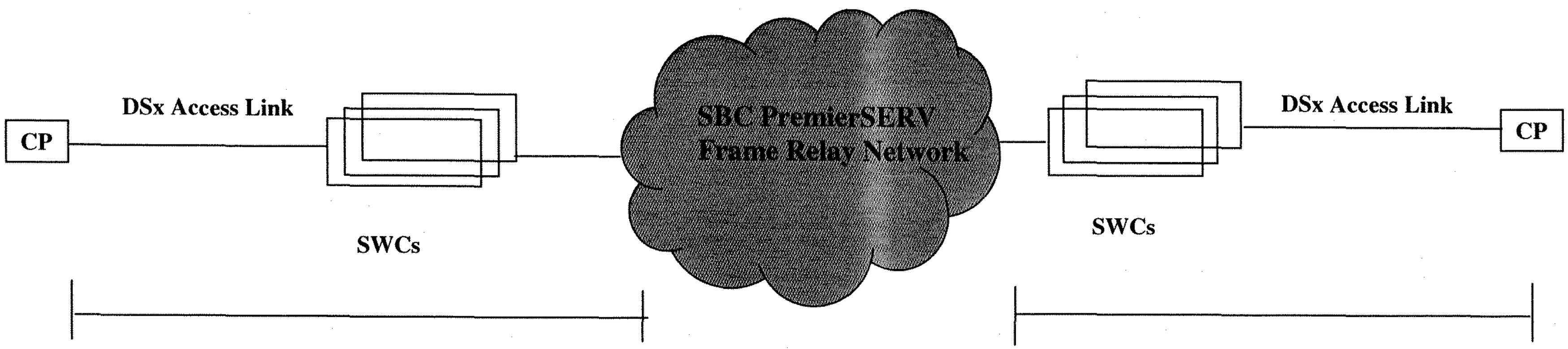
Access Sold With SBC PremierSERV Frame Relay Retail Rates - SBC Data Product Reference & Pricing Guidebook, http://www.sbc.com/gen/public-affairs?pid=319 Sections 5.2.4(C), National Volume Incentive Plan (VIP) Discount at p. 184; 5.2.4(I) "Runaway Frame Price Plan" at p. 189-190 (although squeeze exists even after expiration of Runaway Frame Price Plan); and Sections 6.2.1 at pp. 6-11 and 6.6.1 at p. 17.

with: **SBC Special Access Wholesale Tariffed Rates:** SWBT Tariff F.C.C. No. 73, Section 39, page 147 (DS-3 channel termination) effective November 21, 2003; SWBT Tariff F.C.C. No. 73, Section 39, page 66.0.124.1 (DS-1 channel termination) effective May 17, 2003; SWBT Tariff F.C.C. No. 73, Section 39, page 154.0.159 (mileage) effective November 21, 2003; SWBT Tariff F.C.C. No. 73, Section 39, page 173 (MUX) effective November 21, 2003; SWBT Tariff F.C.C. No. 73, Section 7.3.10(F)(28)(a) (HCTP and OPP) effective January 7, 2003; and SWBT Tariff F.C.C. No. 73, Section 38 (MVP discount) effective August 26, 2000

Price squeeze analysis assumes most efficient BOC competitor qualifying for highest available wholesale discount. Similar price squeezes would be present in other SBC regions.

3. Other discriminatory conduct relating to the provisioning and repairing of special access circuits: *See* AT&T's Comments on Verizon's Second Section 272 Audit Report, EB Docket No. 03-200 (February 10, 2004) at 6-9 and Dr. Bell's Declarations appended thereto ¶¶ 6-10 (installation and repair metrics for DS-1 service for unaffiliated carriers consistently and materially worse than for the 272 affiliate); AT&T's Comments on SBC's Second Section 272 Audit Report, EB Docket No. 03-199 (March 26, 2004) at 7-10 and Bell Decl. ¶¶ 15-20, 24-25 (installation metrics showed consistently worse results for nonaffiliated carriers than for SBCS for almost all combinations of states and service, DS0, DS1 and DS3; strong and consistent evidence of discrimination with respect to the repair metrics for both DS0 and DS1 service); AT&T's Comments on BellSouth's Section 272 Audit Report, EB Docket No. 03-197 (March 9, 2004) at 5-7 and Bell Decl. ¶¶ 9-13 (installation metrics showed consistently worse results for nonaffiliated carriers for DS1 service and consistently slower Firm Order Confirmation for DS3 service; strong and consistent evidence of discrimination with respect to the repair metrics for DS1 service).

SBC Retail Offer
SBC PremierSERV℠ Frame Relay Service
Access List Pricing for Retail Customers



Retail List Access Rates: "No term" to 5 Years Term Plan
DS1 = $182- $156

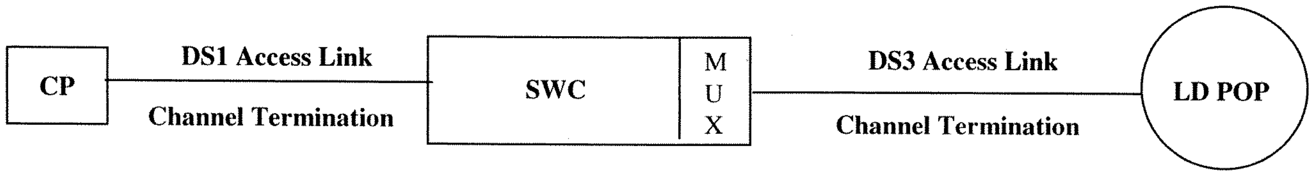
Retail Discounted Access Rates: "No term" to 5 Years Term Plan (TVP 13% ONLY)
DS1 = $158 - $136

Retail Discounted Access Rates: "No term" to 5 Years Term Plan (TVP 13% & "Runaway FR" Promo 20%)
DS1 = $127 - $109

SBC PremierSERV FR access rate includes access from Customer-Premise to LEC SWC to Company's FRS Network; no Channel Termination and Mileage charges. SBC does not offer Access alone service to its Retail customers. SBC offers access as part of bundled Port and access services

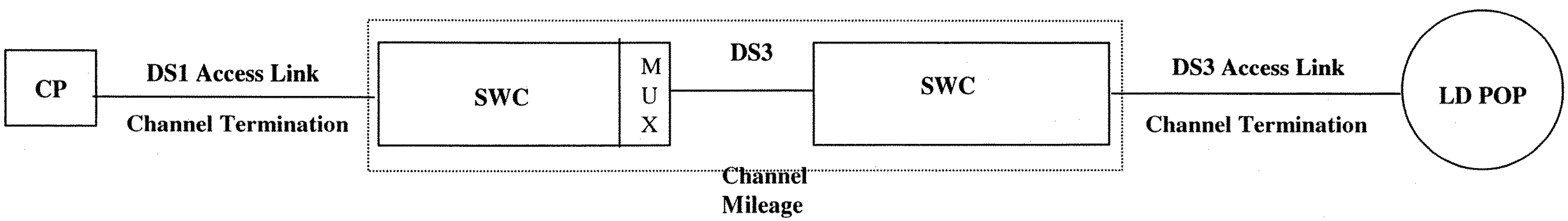
SWBT Special Access Pricing for Wholesale Customers
DS1 on DS3 HiCap* (5 Yr Term, MVP=14%, 100% Fill)

Zero Mileage View – Access Cost Elements



HCTPP W/MVP	$77.40	+	$14.59	+	$29.95	= $121.94
OPP W/MVP	$64.50**	+	$14.59	+	$29. 95	= $109.04
SBC Retail Discounted Price w/ "Runaway FR" Promo						**= $109.00**

15 Mile Mileage View – Access Cost Elements

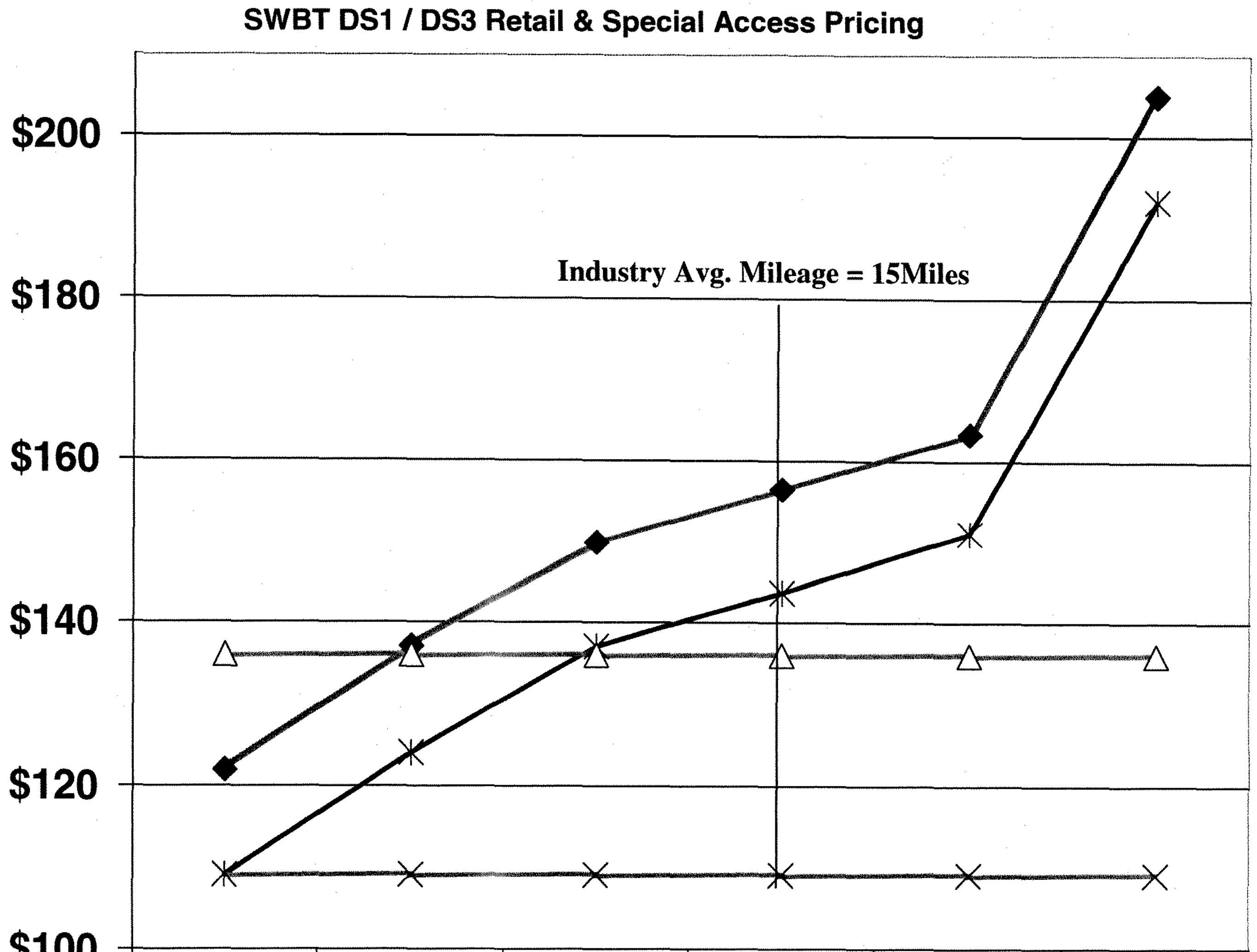


HCTPP W/MVP	$77.40	+	$14.59 + $13.82 + $20.73	+	$29.95	= $156.49
OPP W/MVP	$64.50**	+	$14.59 + $13.82 + $20.73	+	$29.95	= $143.59
SBC Retail Discounted Price w/ "Runaway FR" Promo						**= $109.00**

* Illustrative, price squeeze exists at other capacity levels as well.
** Very limited availability; also a limited duration discount.

DS1 Access on DS3 HiCap

100 % Fill



	Zero Mileage	1 Mile	10 MILE	15 Mile	20 Mile	50 Mile
Special Access Cost Rate w/MVP Disc (14%) - 5 Year Term HCTPP	$122	$137	$150	$156	$163	$205
Special Access Cost Rate w/MVP Disc (14%)- 5 Year Term OPP	$109	$124	$137	$144	$151	$192
SBC Retail Price w/TVP Disc (13%) - 5 Year Term	$136	$136	$136	$136	$136	$136
SBC Retail Price w/TVP(13%) & "Runaway FR 2004 Promo (20% Disc) - 5 Year term	$109	$109	$109	$109	$109	$109

SBC Frame Relay Service
2003 / 2004 Promotions

- On January 5, 2004, SBC launched a "Runaway Frame Relay" promotion, basically an extension of (modified) its 2003 "Rock My Relay" promotion, effective through April 2, 2004; it may still be offered to some retail customers
- SBC launched two promotions in 2003 to support its SBC PremierSERV℠ Frame Relay Service:
- "Rock My Relay" – the pricing plan was available between May 19, 2003 and September 30, 2003. Later, this promotion was extended to December 31, 2003.
- "All Aboard" – One Month's free service -Targeted at SBC' vintage (i.e. legacy) regional FR customers to migrate to SBC PremierSERV℠ FR services. The promotion ended in June 2003.

Year	Pricing Plan	Discount*	Eligibility Requirements
2004	Runaway Frame	20%	Customers with at least 60% of their new and existing FR circuits within SBC franchise territory and served by SBC
2003	Rock My Relay Pricing Plan 1	25%	Customers with at least 80% of their new and existing FR circuits within SBC franchise territory and served by SBC
2003	Rock My Relay Pricing Plan 2	17%	Customers with 60% to 79% of the new and existing Frame Relay circuits within SBC Franchise territory and served by SBC
2003	Additional PVCs	20%	During the promotional period, additional PVCs will qualify for this discount if ordered with the initial order

* Discounts apply to SBC' ASI's currently available rates for port, access, and PVC on qualifying orders

Special Access Discount Plan

- SBC offers Term Pricing Plans (M/M, 3, 5, and 10 Year) and Volume Option Plan (DS3 or DS3 equivalents, 1, 3, 6, and 12 DS3 bundles) for Special Access elements; Channel Termination, Channel Mileage, and Multiplexing
- SBC also offers "Most Valuable Partner (MVP) discount (14%) to its high volume customers

SBC Rates and Charges

Pricing / Discount Plans:

- Term Volume Discount Plan (TVP) - SBC offers TVP to SBC PremierSERV Frame Relay Service Arrangements for 2, 3, and 5 Year Term Pricing Plans w/ a minimum of 10 SBC PremierSERV Frame Relay Service Arrangements.

- SBC offers Port and Access rates for "No Term", 1, 2, 3, and 5 year terms
- National Volume Incentive (VIP) Discount – Customers subscribing to any of SBC' PremierSERV Frame Relay Service will automatically receive a volume discount per Master account number based on the customers' total monthly billed revenue (MRC).

- The Applicable discounts are as follows:

MRC	Discount
$ 2,000	5%
$ 5,000	7%
$10,000	9%
$15,000	11%
$20,000	13%